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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3170 OF 1998

Rupee Co-operative Bank Limited
2062, Sadashiv Peth, Pune ... Petitioner

V/s.

1. Shri Shailesh V. Vaidya
residing at 287, Somwar Peth,
Pune

2. Shri R.B. Nimse
Judge, 3rd labour Court, Pune

3. Shri S.G. Kadam, Member
Industrial Court, Pune ... Respondents

Mrs.Meena H. Doshi for Petitioner
Mr.S.K. Talsania with N.A. Kulkarni for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: JULY 31, 2007
JUDGMENT PR0NOUNCED ON: **OCTOBER 08, 2007**

JUDGMENT:

. The petition challenges the orders passed by the Labour Court on 10.7.1997 and by the Industrial Court in the Appeal on 15.1.1998. The Labour Court had partly allowed the application filed by the respondent workman u/s 78 of the Bombay Industrial Relations Act. The Labour Court had rejected the respondent's prayer for reinstatement but had granted him backwages for the period from 16.5.1995 to 24.4.1996. The Industrial Court has allowed the appeal filed by the respondent i.e. Appeal (BIR) No.8 of 1997, partly and has directed the petitioner bank to reinstate the respondent in his

original post with continuity of service and half the backwages. When the petition was admitted, the order directing reinstatement was stayed. However, the petitioner was directed to pay the backwages awarded by the Industrial Court.

2. The petitioner is a registered bank under the Banking Regulations Act and also under the provisions of the Maharashtra Cooperative Societies Act. Being a cooperative bank, the provisions of the Bombay Industrial Relations Act (for short, hereinafter referred to as 'BIR Act') are applicable to it.

3. Respondent No.1 was employed with the bank from 2.4.1992. He was confirmed after one year's service. On 23.12.1993, the regular staff manning the cash counter was on casual leave. The respondent was directed to officiate as the receiving cashier on that day with the assistance of one P.S. Nanivadekar. At the close of the banking hours on 23.12.1993 it was found that the cash in hand did not tally with the entries and there was a shortfall of Rs.49,995/-. According to the petitioner, Respondent No.1 was informed of the consequences of the shortfall and he therefore, submitted a letter on the same day accepting his responsibility for the shortage in cash. He added further that he would be responsible in case the cash

was not recovered. According to the petitioner, the members of the family of Respondent No.1 went to the bank at 11.30 pm and made good the shortfall. A confidential report was submitted by the Branch Manager to his superiors indicating that the conduct of Respondent No.1 was suspicious and that it warranted action against him.

4. On 7.1.1994, the petitioner received a complaint from one of their accountholders, Laxman V. Jadhav. He complained that he had given a withdrawal slip for Rs.15,000/- to Respondent No.1 for opening a fixed deposit account in his name by transferring the amount from his savings account. According to Jadhav, although his savings bank account indicated that Rs.15000/- had been withdrawn, the term deposit was not made by Respondent No.1 and no receipt was issued to him in respect of the term deposit.

5. Respondent No.1 was issued a notice on 10.1.1994 suspending him and calling upon him to show cause as to why action should not be initiated against him for the embezzlement of two separate amounts, being Rs.49995/- on 23.12.1993 and another amount of Rs.15000/- from Jadhav. A chargesheet alleging that he had committed misconducts under standing order 23(iv) 5, 13 and 16 was issued to Respondent No.1. An enquiry was held against

him. The enquiry officer submitted his report on 23.3.1995 holding that the charges of misconduct had been proved. Not being impressed with the objections raised and comments of the respondent on the report of the enquiry officer, the petitioner discharged respondent No.1 from service w.e.f. 16.4.1995 and paid him one month's notice pay.

6. An approach letter was submitted by Respondent No.1 u/s 42 of the BIR Act to the petitioner bank. As the petitioner refused to concede to the demand contained in the approach letter, Respondent No.1 preferred an application u/s 78 of the BIR Act before the Labour Court. The case of the Respondent No.1 was that the enquiry held against was not fair and proper and that the findings of the enquiry officer were perverse. His contentions were accepted by the Labour Court and by way of interim relief granted Respondent No.1 reinstatement in service. The petitioner moved a revision application before the Industrial Court. The order directing reinstatement was set aside but the petitioner was directed to pay Respondent NO.1 his wages every month. The Industrial Court upheld the conclusion that the enquiry held against Respondent No.1 was not fair and proper and that the findings were perverse.

7. The petitioner therefore was permitted to lead

evidence in Court to justify the charges levelled against Respondent No.1. The petitioner examined its Branch Manager at the relevant time and Jadhav. The Respondent examined himself and his father in support of his case.

8. The Labour Court by its order dated 10.7.1997 held that the misconduct alleged against Respondent No.1 was proved but it held that the order of discharge was a shockingly disproportionate punishment. It therefore, refused the relief of reinstatement and directed the petitioner to pay salary for the period from 16.5.1995 to 24.4.1996 i.e. the period prior to which the Industrial Court directed payment of wages to the respondent in each month.

9. Aggrieved by the decision of the Labour Court, Respondent No.1 filed an appeal u/s 84 of the BIR Act being Appeal (BIR) No.8 of 1997. The Industrial Court on the basis of the material on record directed Respondent No.1 to be reinstated in service with continuity of service and half the backwages payable. The petitioner, being aggrieved by these orders of the Labour Court and the Industrial Court, has filed the present petition.

10. The first charge which must be considered is

with respect to the shortage of cash to the tune of Rs.49,995/- at the end of the day on 23.12.1993. The learned advocate for the Petitioner submits that Respondent No.1 in his reply to the chargesheet has not traversed each charge although the charges were specific. She submits that the accountant's scroll of the bank showed that when the amount was tallied at the end of the day there was a shortage of cash of Rs.49,995/-. There is a noting on the scroll to the effect "short cash Rs.49995/- deposited by Shri Vaidya. Cash checked physically and found correct as per denominations mentioned". She submits that the case of Respondent No.1 as per the statement of claim is not borne out by the evidence on record. According to the learned advocate, the Labour Court had rightly held that the charges levelled against the respondent workman had been proved. She submits that the Industrial Court ought not to have interfered with this finding of fact. According to the learned advocate, Respondent No.1 had admitted that the shortfall in the cash on 23.12.1993 was due to his fault and had, therefore, repaid the amount to the bank. The learned advocate then submits that had Respondent NO.1 not been responsible for the shortage in the cash neither he nor the members of his family would have immediately repaid the amount on the same day. She therefore submits that the finding of the Industrial Court that Respondent No.1 had not

misapprorpriated the amount of Rs.49,995/- is perverse and must be set aside.

11. The learned Counsel for Respondent No.1 has submitted that the aforesaid noting on the scroll was made by one Amar Deshpande who has not been examined as a witness by the petitioner bank. The learned Counsel points out that no documentary evidence was adduced to establish that Rs.49,995/- was deposited by Respondent No.1 on 23.12.1993 and that therefore the noting made on the scroll was correct. He submits that the evidence on record does not support the case of the petitioner, either of there being a shortage of cash on 23.12.1993 or that Respondent NO.1 had deposited the amount as noted on the accountant's scroll. According to the learned counsel the findings of the Industrial Court in this regard should not be interferred with under the writ jurisdiction of this Court as there is no error apparent on the face of the record nor is there any perversity in the order.

12. A perusal of the order of the labour Court indicates that it has accepted the contentions of the Petitioner. It has found that the letter dated 23.12.1993 of Respondent No.1 owning the responsibility for the shortage of cash led to an inference that he was responsible for misappropriating the amount. The Labour

Court observed that Respondent No.1 had not bothered to indicate who had made the notings on the accountant's scroll and, therefore, held that Respondent No.1 was guilty of the first charge of misappropriation of Rs.49,995/- on 23.12.1993. The Industrial Court has observed that the crucial witness Amar Deshpande who had checked the cash and endorsed the scroll was not examined by the petitioner. Dixit, the branch manager, who was examined had no personal knowledge about the shortage of cash and he learnt of the shortage only at about 6 pm on 23.12.1993. The Industrial Court has held that the hearsay evidence of Dixit could not be accepted. Besides this, it has noted that no police complaint had been lodged by the Petitioner on account of the shortage. The Industrial Court has observed that it was not possible to believe that a middle class person would be able to deposit an amount of Rs.49,995/- with the bank at 11 pm as alleged by the petitioner. The Industrial Court has held that if in fact this cash had been deposited by the petitioner there would be some document or voucher in support of the deposit. It is in these circumstances that the Industrial Court has disbelieved the evidence of the Petitioner bank and concluded that Respondent No.1 had not admitted his guilt at any point of time.

13. In my opinion, these findings of the Industrial

Court cannot be faulted. In his reply to the chargesheet filed on 8.6.1994, Respondent No.1 has submitted that he had nothing to do with the cash and in fact Nanivadekar who was assisting him was responsible for the cash amount. No enquiry had been initiated against Nanivadekar. The workman has also replied stating that when the cash was tallied at about 3pm it was found that the amount of Rs.49995/- was short. Nanivadekar was with him when this shortage was noticed. Both he and Nanivadekar met the Branch Manager Dixit and informed him about the shortage. The workman has contended in his reply that till 9.30 at night, the cash was not found. However, the bank manager refused to file a police complaint. According to the workman, he had nothing to do with the shortage of Rs.49,995/-. Amar Deshpande, a material witness has not been examined by the petitioner bank for reasons best known to it. The petitioner has also not examined Nanivadekar, who was present when the shortfall in cash was noticed. The bank has only examined Dixit who was informed about the shortage by Respondent No.1. Dixit has not thrown any light on the incident which occurred on 23.12.1993. He had no personal knowledge of the incident and, therefore, could not depose to the incident. The verification of the cash was admittedly done by Amar Deshpande, the accountant. Thus, in my view, the Industrial Court has not erred in concluding that the

petitioner was unable to prove that the shortage of cash of Rs.49,995/- was due to the conduct of respondent No.1. The evidence of the respondent No.1 and that of his father has been believed by the Industrial Court. Cogent reasons have been assigned by the Industrial Court for accepting the evidence led by Respondent No.1. Respondent No.1 had denied that either he or his father had deposited Rs.49995/- on 23.12.1993 to make good the deficit. According to him, the amount was deposited on 30.12.1993 after obtaining a loan. He has also disclosed that the amount was deposited only because Dixit threatened to file a criminal case against him. In my view, there is no need to interfere with the findings of fact arrived at by the Industrial Court. The appreciation of the evidence on record on the issue of shortfall of Rs.49995/- by the Industrial Court does not show any perversity which requires interference of this Court.

14. The other charge against the respondent is that he had misappropriated an amount of Rs.15000/- which belonged to one Jadhav. The case of the petitioner is that Jadhav, who was an accountholder with the bank, wanted to invest Rs.15,000/- in a term deposit with the bank. Jadhav had an amount of Rs.13000/-, approximately, in his savings account which he wanted to transfer to the term deposit. He therefore, deposited

an additional amount of about Rs.2000/- into his savings account and then signed a withdrawal slip for Rs.15000/-. It is alleged that he gave this withdrawal slip to Respondent No.1 in order to withdraw the amount for investing it in a fixed deposit account. According to Jadhav, Respondent No.1 went to his shop and induced him to sign on another slip, informing him that his signature on the earlier slip did not tally with the bank records. When Jadhav approached the bank for his fixed deposit receipt, he was informed that no such deposit had been made. Jadhav submitted his complaint to the petitioner on 6.1.1996.

15. According to the learned Counsel for the petitioner, the evidence on record was sufficient to prove that Respondent No.1 had withdrawn the amount from Jadhav's savings account. She submits that the transfer scroll which was produced before the labour Court indicated that an amount of Rs.13906/- was transferred from the savings bank account of Jadhav on 10.12.1993. There is also an entry in the accountant's scroll on the same day which establishes that Rs.1094 had been deposited into Jadhav's account, thus, making up the total of Rs.15,000/-. According to the learned advocate, the respondent had misled Jadhav into signing a transfer slip for Rs.15,000/- instead of the withdrawal slip. She submits that the conduct of the

respondent in going to Jadhav's shop and inducing him to sign another slip indicated that Respondent No.1 had misappropriated the amount of Rs.15,000/- from Jadhav's account. She submits that the Labour Court has rightly concluded that Jadhav's evidence was sufficient to prove that Respondent No.1 was involved in the misappropriation of this amount.

16. Mr.Talsania, appearing for the respondent No.1, submits that the complaint of Jadhav which is dated 6.1.1996 speaks about him having signed a withdrawal slip and a term deposit form. He submits that this term deposit form was not placed on record before the Labour Court at any point of time by the petitioner. According to the learned Counsel, the evidence of Jadhav is contrary to his complaint and, therefore, his testimony has rightly been disbelieved by the Industrial Court. He points out that the procedure for opening a fixed deposit account is that the accountholder is required to fill a fixed deposit form and sign the same. He submits that such a form is not the same as the transfer slip which is relied on by the petitioner and therefore, Jadhav's case cannot be believed at all. The learned counsel submits that there is no perversity in the findings of the Industrial Court that there was no cogent evidence on record to hold that Respondent No.1 had misappropriated the sum of Rs.15000/- which was

withdrawn from Jadhav’s account.

17. Although there is no real discussion by the Industrial Court on the second misconduct alleged against Respondent No.1, I have considered the evidence on record and find that no case has been made out by the petitioner in support of its case. The procedure for opening a term deposit account has been described by Dixit, the branch manager in his evidence. He has admitted that a form is required to be filled by the depositor after which a deposit by cash or by cheque is accepted by the bank. This witness has admitted that he had no knowledge as to whether Jadhav had tendered the form for depositing the amount on 10.12.1993. He conceded that the form had not been produced in Court. The witness has also accepted the fact that the withdrawal slip has notings made by Respondent No.1 on the reverse. According to this witness, Respondent No.1 had forged the signature of Jadhav on the withdrawal slip which was returned to Jadhav. This witness has stated that the cashier had not informed him on 10.12.1993 i.e. the date on which the alleged misappropriation had occurred, that he gave Respondent No.1 an amount of Rs.15000/- against the withdrawl slip signed by Jadhav. A perusal of Jadhav’s evidence indicates that he has admitted that he had not filled any form for investing any amount in a fixed deposit

account. He claims that a transfer form was given by Respondent No.1 to him when he asked him to fill his fixed deposit form. Jadhav admits that he knew the respondent only because he used to visit his shop on occasions. He has also admitted that he was not a close friend of the respondent. It is inconceivable that a person would give a withdrawal slip to an unknown person, although a bank employee. According to this witness, he was informed by his friend's sister that an amount had been withdrawn from his account between 20.12.1993 and 25.12.1993. This witness has not lodged any police complaint against the respondent. The witness then proceeds to state that on 30.12.1993 a fixed deposit form was filled on his behalf by Dixit or some other person. If indeed, Jadhav had sought to open a fixed deposit account on 10.12.1993 there would have been some record with the bank to indicate this fact. No term deposit form has been filled by Jadhav of that date. There is no evidence on record to indicate that the amount was withdrawn from Jadhav's account by Respondent No.1 or that it was not paid to him. Significantly, Jadhav has stated that he filled a fixed deposit form on 30.12.1993 and not on 10.12.1993. If the normal procedure of the bank was that a fixed deposit form must be filled for opening an account, there is no explanation as to why that procedure was not adopted on 10.12.1993 when Jadhav allegedly wanted to

open the Fixed Deposit account. If the Petitioner's story is to be believed that Jadhav had signed a transfer slip on Respondent No.1's misrepresentation, there is no material on record to establish that Respondent No.1 had transferred the amount to his own account. In my view, therefore, the petitioner has not proved its case against Respondent No.1 that he had misappropriated an amount of Rs.15000/- from the account of Jadhav. The findings of Labour Court with regard to this misconduct are unsustainable. The Industrial Court has rightly concluded that this charge has not been established by the Petitioner.

18. In my view, therefore, there is no perversity in the findings recorded by the Industrial Court which require interference by this Court. The Industrial Court has concluded that while the respondent workman may not be guilty of the misconduct of misappropriation, he was guilty of negligence with regard to the deficit of Rs.49995/-. In these circumstances, the Industrial court has directed that 50% of the backwages should be withheld.

19. Reliance is placed by the learned advocate for the Petitioner on the judgment in the case of *S.K. Awasthy v/s. M.R. Bhope, Presiding Officer, 1st Labour Court & Ors.,* **1994 (68) FLR 841** to submit that hearsay

evidence is admissible and no formal proof is required to be adduced in respect of the documents produced before the Labour Court. There can be no doubt that hearsay evidence can be accepted by the enquiry officer. In the present case, the enquiry has been held to be bad. The management had led evidence before the Labour Court to prove the charges levelled against the workman. In the appeal, the Industrial Court has preferred not to rely on the evidence of the Branch manager since he had no personal knowledge at all about the incident. The appeal u/s 84 of the BIR Act is maintainable, both on questions of fact and law and therefore Industrial Court could accept the evidence which appealed to it in preference to the view taken by the Labour Court.

20. The learned advocate for the petitioner also relies on the judgment of the learned Single Judge of this Court in *Fancy Corporation Limited v/s. Girdhari Mangru Yadav,* **2007 II CLR 210** in support of her submission that neither the Labour Court nor the Industrial Court ought to have interfered with the punishment imposed on Respondent No.1 in view of the gravity of the misconduct committed by him. She submits that where the findings of the Enquiry Officer are held to be legal, proper and not perverse, the management is vested with the discretion to impose the appropriate punishment and the Courts below ought not to have

interfered with this punishment.

21. The learned advocate also relies on the judgment in the case of a learned Single Judge of this Court in *Brihanmumbai Municipal Corporation, through the General Manager, BEST Undertaking v/s. Ashokkumar Hingu Singh,* **2006 III CLR 364** and of the Supreme Court in *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Ors v/s. Secretary, Sahakari Noukarara Sangha and Ors,* **(2000) 7 SCC 517** and *Anand Regional Co-op. Oil S. Union Ltd. v/s. Shaileshkumar Harshadbhai Shah,* **2006 III CLR 512** to submit that while exercising the powers of judicial review, the Labour Court and the Industrial Court must be slow to interfere with the punishment imposed by the management. The approach to be adopted by the Courts below and the scope of judicial review while considering the punishment imposed by an employer have been delineated in these judgments. The learned advocate submits that the Industrial Court has erred in expecting strict proof in the matter when all that is required is that the employer must establish is a preponderance of probabilities to indicate that the action taken against the workman was correct.

22. The aforesaid judgments are cited by the learned advocate for the petitioner to contend that the scope for judicial review of the enquiry officer’s report and

findings is very limited. She also urges that the Industrial Court ought not to have interfered with the findings arrived at by the Labour Court in the light of the aforesaid judgments. These submissions cannot be accepted. It must be noted that in all these cases the findings of the Enquiry Officer were found to be legal, proper and not perverse. It is true that the Labour Court while exercising its powers u/s 78 has to consider the preponderance of probabilities and need not substitute its subjective opinion in place of the one arrived at by domestic Tribunal in each case. In the present case, it has been held that the findings recorded by the enquiry officer were perverse. This conclusion of the Labour Court was challenged by the Petitioner upto this Court. The challenge having failed, the management was required to prove the charges before the Labour Court. After appreciating the evidence on record, the Labour Court held that the charges had been proved. However, the Industrial Court while exercising appellate powers u/s 84 of the BIR Act can always review the entire evidence on record, reassess the same and draw its own conclusions in such a case. The powers of the Industrial Court u/s 84 while reappreciating the evidence led before the Labour Court are not circumscribed only to exercising the power of judicial review. It is always open for it to draw its own conclusions on the basis of the evidence on record

where the findings of the enquiry officer are found to be perverse. Therefore, the aforesaid judgments have no application to the facts and circumstances of the present case.

23. In the present case, I have already held that the Industrial Court has rightly disbelieved the evidence led before the Labour Court in respect of both the charges. In the first case of misappropriation of Rs.49995/-, the Industrial Court has after considering the evidence on record concluded that besides the respondent workman, one Nanivadekar was also assisting the respondent and he had not been examined by the bank. The Industrial Court has rightly disbelieved the evidence of the bank manager who was unable to throw any light on the matter. The endorsement on the accountants' scroll did not bear witness to the fact that the respondent was responsible for the deficit of the cash collection on 23.12.193. In the case of the other charge of misappropriation of Rs.15000/- from Jadhav, the Industrial Court has rightly found that there was no record available with the bank to indicate that the amount of Rs.15000/- was withdrawn by the workman from Jadhav's account and that he had pocketed the same. The case of Jadhav, that the amount was to be invested in a fixed deposit, has not been believed as a fixed deposit form for investing the amount was not

filled in by Jadhav, contemporaneously. In these circumstances, it cannot be said that the evidence led before the Labour Court establishes on a preponderance of probabilities that it was the respondent who was responsible for misappropriating the amount from Jadhav. According to Jadhav, he had requested the respondent to invest the amount on 10.12.1993 and he noticed that the respondent, had failed to do so some time in the first week of January. Surprisingly, no police complaint was filed either by Jadhav or by the bank against the respondent if indeed he had committed the misconduct. In such circumstances, the appreciation of evidence by the Industrial Court cannot be faulted.

24. The learned advocate submits that assuming the Industrial Court was right in its conclusion that the charge of misappropriation has not been proved, the respondent workman ought not to have been reinstated in service and compensation in lieu of reinstatement ought to have been awarded. She further submits that in any event the backwages ought not to have been awarded since there is no evidence on record in support of his case for backwages. Reliance is placed on the judgment in the case of *APSRTC v/s. Raghuda Siva Sankar Prasad,* **(2007) 1 SCC 222** and in *The Karad Urban Co-op. Bank Ltd. v/s. Suresh Purushottam Khatvkar & Anr.* **(Writ Petition No.2690 of 1990) and Others**.

25. The powers of this Court under Article 227 must be exercised when there is perversity of findings recorded by the Courts below or there is an error apparent on the face of the record. In the present case, I have already held that the order of the Industrial Court does not suffer from these infirmities warranting interference under this Court’s writ jurisdiction.

26. The Industrial Court has therefore, rightly held that the petitioner has illegally terminated the services of Respondent No.1. There is no need to interfere with the findings recorded and the relief granted by the Industrial Court. The petition fails. Rule discharged. No costs.

27. The learned counsel for the petitioner seeks continuation of the stay in respect of reinstatement. Stay to continue for a further period of four weeks from today.